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Attorneys for Defendants Apollo Group, Inc.

UNITED STATES DISTRICT COURT – SOUTHERN DISTRICT OF
CALIFORNIA

CHAD MCKINNEY, an individual,
Plaintiff,

v.

APOLLO GROUP, INC.,
UNIVERSITY OF PHOENIX, a
Corporation, MECHELLE
BONILLA, an Enrollment Manager
at UNIVERSITY OF PHOENIX,
KYAN FLYNN, Director of
Enrollment at UNIVERSITY OF
PHOENIX, APRIL ALCORN, an
Employees Relations Consultant at
UNIVERSITY OF PHOENIX,
CARLYN LINDSTEN, Associate
Director of Enrollment at
UNIVERSITY OF PHOENIX

Defendants

CASE NO. 07-CV-2373 WQH CAB

**DECLARATION OF NATHAN W.
HICKS IN SUPPORT OF
OPPOSITION TO CLERK'S ENTRY
OF DEFAULT**

[FRCP 55(c)]

Date: April 7, 2008
Time: 11:00 a.m.
Courtroom: 4
Judge: Hon. William Q. Hayes

DATE OF FILING: December 19, 2007

1 I, Nathan W. Hicks, declare and state as follows:

2
 3 1. I am an attorney licensed to practice law before all courts of the State
 4 of California and I am a member of the law firm of Snell & Wilmer, attorneys of
 5 record for defendant Apollo Group, Inc. ("Apollo") in this matter. I have personal
 6 knowledge of the matters set forth in this declaration, and if called upon as a
 7 witness, I could competently testify to them.

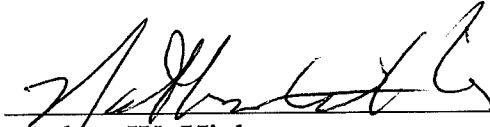
8
 9 2. Plaintiff, Chad McKinney ("McKinney"), filed the complaint in the
 10 above-captioned matter on December 19, 2007. McKinney, however, did not
 11 obtain a summons issued by the Court until approximately one month later on
 12 January 15, 2008. A true and correct copy of the summons issued by the Court as
 13 reflected in the Court's website at [https://ecf.casd.uscourts.gov/cgi-](https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-L_353_0-1)
 14 [bin/DktRpt.pl?117733301982358-L_353_0-1](https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-L_353_0-1) is attached as Ex. A. According to
 15 McKinney's Return of Service filed with the Court on March 12, 2008, a process
 16 server attempted to serve Mechelle Bonilla "by leaving copies with Virginia Torres
 17 at defendant's place of employment" on February 4, 2008. A true and correct copy
 18 of McKinney's Return of Service as reflected in the Court's website at
 19 https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-L_353_0-1 is
 20 attached as Ex. B. According to McKinney's Return of Service filed with the Court
 21 on March 12, 2008, a process server attempted to serve Carlyn Lindsten "by leaving
 22 copies with Ellen Bowens (Administration) at defendant's place of employment" on
 23 January 31, 2008. A true and correct copy of McKinney's Return of Service as
 24 reflected in the Court's website at [https://ecf.casd.uscourts.gov/cgi-](https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-L_353_0-1)
 25 [bin/DktRpt.pl?117733301982358-L_353_0-1](https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-L_353_0-1) is attached as Ex. C. According to
 26 McKinney's Return of Service filed with the Court on March 12, 2008, a process
 27 server attempted to serve Kyan Flynn "by leaving copies with Ellen Bowens
 28 (Administration) at defendant's place of employment" on January 31, 2008. A true

1 and correct copy of McKinney's Return of Service as reflected in the Court's
2 website at [https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-](https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-L_353_0-1)
3 L_353_0-1 is attached as Ex. D.

4 3. On February 29, 2008, I contacted McKinney by telephone and
5 explained that he had not given sufficient service of process to Apollo, and that the
6 parties should stipulate to setting aside the entry of default. Afterwards, McKinney
7 could then attempt to properly re-serve Apollo, UOP or both. Nevertheless,
8 McKinney still refused to stipulate to setting aside the entry of default on Apollo.

9
10 I declare under penalty of perjury under the laws of the State of California
11 that the foregoing is true and correct.

12
13 Dated: March 14, 2008

14 
15 Nathan W. Hicks

Snell & Wilmer

LLP
LAW OFFICES
600 Anton Boulevard, Suite 1400
Costa Mesa, California 92626-7689
(714) 427-7000

EXHIBIT A

EXHIBIT A, PAGE 4

SAO 440 (Rev. 10/93) Summons in a Civil Action

UNITED STATES DISTRICT COURT

THE UNITED STATES DISTRICT COURT SOUTHERN

District of California

Chad McKinney, Pro Se

SUMMONS IN A CIVIL CASE

V.

APOLLO GROUP INC., UNIVERSITY OF PHOENIX, a Corporation, MECHELLE BONILLA, an
Enrollment Manager at UNIVERSITY OF PHOENIX, KYAN FLYNN, Director of Enrollment at
UNIVERSITY OF PHOENIX, APRIL ALCORN, an Employee Relations Consultant at UNIVERSITY OF
PHOENIX, CARLYN LINDSTEN, Associate Director of Enrollment at UNIVERSITY OF PHOENIX

CASE NUMBER:

07 CV 2373 WQH-CAB

TO: (Name and address of Defendant)

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Chad McKinney, Pro Se
6266 Madeline Street Apt. No. 61
San Diego, Ca 92115-5630

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

W. SAMUEL HAMRICK, JR.

JAN 16 2008

CLERK

DATE

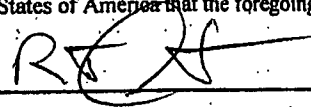
(By) DEPUTY CLERK

EXHIBIT A, PAGE 5

FILED

2008 MAR 12 PM 4:47

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RETURN OF SERVICE 07 cv 2373 - WQH			
Service of the Summons and Complaint was made by me		DATE	1/31/08 KMY DEPUTY
NAME OF SERVER <i>R.T. Hansell</i>		TITLE <i>R.P.S.</i>	
Check one box below to indicate appropriate method of service			
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____			
<input type="checkbox"/> Left copies thereof at the defendant's dwelling, house or usual place of abode with a person of suitable age and discretion then residing therein: _____			
Name of person with whom the summons and complaint were left: _____			
<input type="checkbox"/> Return unexecuted: _____			
<input checked="" type="checkbox"/> Other (specify): <i>Served Kyan Flynn by leaving copies with Ellen Bowens (Administration) at defendant's place of employment.</i>			
STATEMENT OF SERVICE FEES			
TRAVEL		SERVICES	TOTAL \$ <i>25</i>
DECLARATION OF SERVER			
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service is true and correct.			
Executed on:	<i>2/12/08</i>	 Signature of Server	
Date		<i>2445 Morena Blvd, Ste 206</i> Address of Server <i>S.D. Ca. 92110</i>	
NOTICE OF RIGHT TO CONSENT TO TRIAL BY A UNITED STATES MAGISTRATE			
IN ACCORDANCE WITH THE PROVISION OF 28 USC 636(C) YOU ARE HEREBY NOTIFIED THAT A U.S. MAGISTRATE OF THIS DISTRICT MAY, UPON CONSENT OF ALL PARTIES, CONDUCT ANY OR ALL PROCEEDINGS, INCLUDING A JURY OR NON-JURY TRIAL, AND ORDER THE ENTRY OF A FINAL JUDGMENT. <u>COUNSEL FOR THE PLAINTIFF HAS RECEIVED A CONSENT FORM.</u>			
YOU SHOULD BE AWARE THAT YOUR DECISION TO CONSENT OR NOT CONSENT IS ENTIRELY VOLUNTARY AND SHOULD BE COMMUNICATED SOLELY TO THE CLERK OF COURT. ONLY IF ALL PARTIES CONSENT WILL THE JUDGE OR MAGISTRATE TO WHOM THE CASE HAS BEEN ASSIGNED BE INFORMED OF YOUR DECISION.			
JUDGEMENTS OF THE U.S. MAGISTRATES ARE APPEALABLE TO THE U.S. COURT OF APPEALS IN ACCORDANCE WITH THIS STATUTE AND THE FEDERAL RULES OF APPELLATE PROCEDURE.			

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure

AO 440 (Rev. 10/93) Summons in a Civil Action

UNITED STATES DISTRICT COURT

THE UNITED STATES DISTRICT COURT SOUTHERN

District of California

Chad McKinney, Pro Se

SUMMONS IN A CIVIL CASE

APOLLO GROUP INC., UNIVERSITY OF PHOENIX, a Corporation, , MECHELLE BONILLA, an
Enrollment Manager at UNIVERSITY OF PHOENIX, KYAN FLYNN, Director of Enrollment at
UNIVERSITY OF PHOENIX, APRIL ALCORN, an Employee Relations Consultant at UNIVERSITY OF
PHOENIX, CARLYN LINDSTEN, Associate Director of Enrollment at UNIVERSITY OF PHOENIX

CASE NUMBER:

07 CV 2373 WQH CAB

TO: (Name and address of Defendant)

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Chad McKinney, Pro Se
6266 Madeline Street Apt. No. 61
San Diego, Ca 92115-5630

an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for
the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period
of time after service.

W. SAMUEL HAMRICK, JR.

JAN 15 2008

CLERK

DATE

(By) DEPUTY CLERK

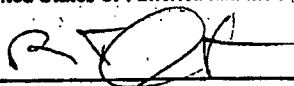
EXHIBIT B, PAGE 1

07 cv 2373- WQH

FILED

2008 MAR 12 PM 4:49

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RETURN OF SERVICE KNH			
Service of the Summons and Complaint was made by me		DATE <u>2/04/08</u> DEPUTY	
NAME OF SERVER <u>R.T. Hansell</u>		TITLE <u>R.P.S.</u>	
Check one box below to indicate appropriate method of service			
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____			
<input type="checkbox"/> Left copies thereof at the defendant's dwelling, house or usual place of abode with a person of suitable age and discretion then residing therein: _____			
Name of person with whom the summons and complaint were left: _____			
<input type="checkbox"/> Return unexecuted: _____			
<input checked="" type="checkbox"/> Other (specify): <u>Served Mechelle Bonilla by leaving copies with Virginia Torres at defendant's place of employment.</u>			
STATEMENT OF SERVICE FEES			
TRAVEL		SERVICES	TOTAL \$45
<div style="text-align: center;">DECLARATION OF SERVER</div> <p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service is true and correct.</p> <p>Executed on: <u>2/12/08</u> </p> <p style="text-align: center;">Date</p> <p style="text-align: center;">Signature of Server</p> <p style="text-align: center;"><u>2445 Morena Blvd., Ste 206</u></p> <p style="text-align: center;">Address of Server <u>S.D. Ca. 92110</u></p>			
<div style="text-align: center;">NOTICE OF RIGHT TO CONSENT TO TRIAL BY A UNITED STATES MAGISTRATE</div> <p>IN ACCORDANCE WITH THE PROVISION OF 28 USC 636(C) YOU ARE HEREBY NOTIFIED THAT A U.S. MAGISTRATE OF THIS DISTRICT MAY, UPON CONSENT OF ALL PARTIES, CONDUCT ANY OR ALL PROCEEDINGS, INCLUDING A JURY OR NON-JURY TRIAL, AND ORDER THE ENTRY OF A FINAL JUDGMENT. <u>COUNSEL FOR THE PLAINTIFF HAS RECEIVED A CONSENT FORM.</u></p> <p>YOU SHOULD BE AWARE THAT YOUR DECISION TO CONSENT OR NOT CONSENT IS ENTIRELY VOLUNTARY AND SHOULD BE COMMUNICATED SOLELY TO THE CLERK OF COURT. ONLY IF ALL PARTIES CONSENT WILL THE JUDGE OR MAGISTRATE TO WHOM THE CASE HAS BEEN ASSIGNED BE INFORMED OF YOUR DECISION.</p> <p>JUDGEMENTS OF THE U.S. MAGISTRATES ARE APPEALABLE TO THE U.S. COURT OF APPEALS IN ACCORDANCE WITH THIS STATUTE AND THE FEDERAL RULES OF APPELLATE PROCEDURE.</p>			

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure

SAO 440 (Rev. 10/93) Summons in a Civil Action

UNITED STATES DISTRICT COURT

THE UNITED STATES DISTRICT COURT SOUTHERN

District of California

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SUMMONS IN A CIVIL CASE

V.

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CASE NUMBER:

07 CV 2373 WQH CAB

TO: (Name and address of Defendant)

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Chad McKinney, Pro Se
6266 Madeline Street Apt. No. 61
San Diego, Ca 92115-5630

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

W. SAMUEL HAMRICK, JR.

JAN 15 2008

CLERK

DATE

(By) DEPUTY CLERK

EXHIBIT C, PAGE 9

07 cv 2373-WQH

FILED

2008 MAR 12 PM 4:46

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RETURN OF SERVICE	
Service of the Summons and Complaint was made by me	DATE <u>1/31/08</u> <u>VNH</u>
NAME OF SERVER <u>R.T. Hansell</u>	TITLE <u>R.P.S.</u>

DEPUTY

Check one box below to indicate appropriate method of service

☐

Served personally upon the defendant. Place where served: _____

☐

Left copies thereof at the defendant's dwelling, house or usual place of abode with a person of suitable age and discretion then residing therein:

Name of person with whom the summons and complaint were left: _____

☐

Return unexecuted:

☒Other (specify): Served Carlyn Lindsten by leaving copies with Ellen Bowens (Administration), at defendant's place of employment.

STATEMENT OF SERVICE FEES

TRAVEL		SERVICES	TOTAL \$25	
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DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service is true and correct.

Executed on:

2/12/08

Date

Signature of Server

2445 Morena Blvd, Ste 206Address of Server S.D. Ca. 92110

NOTICE OF RIGHT TO CONSENT TO TRIAL BY A UNITED STATES MAGISTRATE

IN ACCORDANCE WITH THE PROVISION OF 28 USC 636(C) YOU ARE HEREBY NOTIFIED THAT A U.S. MAGISTRATE OF THIS DISTRICT MAY, UPON CONSENT OF ALL PARTIES, CONDUCT ANY OR ALL PROCEEDINGS, INCLUDING A JURY OR NON-JURY TRIAL, AND ORDER THE ENTRY OF A FINAL JUDGMENT. COUNSEL FOR THE PLAINTIFF HAS RECEIVED A CONSENT FORM.

YOU SHOULD BE AWARE THAT YOUR DECISION TO CONSENT OR NOT CONSENT IS ENTIRELY VOLUNTARY AND SHOULD BE COMMUNICATED SOLELY TO THE CLERK OF COURT. ONLY IF ALL PARTIES CONSENT WILL THE JUDGE OR MAGISTRATE TO WHOM THE CASE HAS BEEN ASSIGNED BE INFORMED OF YOUR DECISION.

JUDGEMENTS OF THE U.S. MAGISTRATES ARE APPEALABLE TO THE U.S. COURT OF APPEALS IN ACCORDANCE WITH THIS STATUTE AND THE FEDERAL RULES OF APPELLATE PROCEDURE.

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure

SAO 440 (Rev. 10/93) Summons in a Civil Action

UNITED STATES DISTRICT COURT

THE UNITED STATES DISTRICT COURT SOUTHERN

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Chad McKinney, Pro Se

SUMMONS IN A CIVIL CASE

V.

APOLLO GROUP INC., UNIVERSITY OF PHOENIX, a Corporation, MECELLE BONILLA, an Enrollment Manager at UNIVERSITY OF PHOENIX, KYAN FLYNN, Director of Enrollment at UNIVERSITY OF PHOENIX, APRIL ALCORN, an Employee Relations Consultant at UNIVERSITY OF PHOENIX, CARLYN LINDSTEN, Associate Director of Enrollment at UNIVERSITY OF PHOENIX

CASE NUMBER:

07 CV 2373 WQH CAB

TO: (Name and address of Defendant)

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Chad McKinney, Pro Se
6266 Madeline Street Apt. No. 61
San Diego, Ca 92115-5630

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

W. SAMUEL HAMRICK, JR.

JAN 16 2008

CLERK

DATE

(By) DEPUTY CLERK

PROOF OF SERVICE*USDC – Southern District, Case No. 07-CV-2373 WQH CAB*

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626.

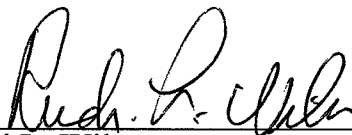
On March 14, 2008, I served, in the manner indicated below, the foregoing document described as **DECLARATION OF NATHAN W. HICKS IN SUPPORT OF OPPOSITION TO CLERK'S ENTRY OF DEFAULT** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

Chad McKinney Pro Se 6266 Madeline Street, Apt. #61 San Diego, CA 92115	Plaintiff Tel: 619-634-3566
United States District Court Attention: Hon. Judge William Q. Hayes 940 Front Street San Diego, CA 92101	

☒ BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 14, 2008, at Costa Mesa, California.


Rudi L. Wilson